

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA

BEST MEDICAL INTERNATIONAL, INC.,

¶

Plaintiff,

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V.

No. 2:10-cv-01043-TFM

ACCURAY, INC., a Corporation

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Defendants

§ 8

**RULE 53 AFFIDAVIT OF
GALE R. PETERSON**

I, Gale R. Peterson, do state and declare as follows:

1. FED. R. CIV. P. 53(b)(3), as amended and effective on December 1, 2003, requires:
 - (3) Entry of Order. The court may enter the order appointing a master only after the master has filed an affidavit disclosing whether there is any ground for disqualification under 28 U.S.C. § 455 and, if a ground for disqualification is disclosed, after the parties have consented with the court's approval to waive the disqualification.
2. 28 U.S.C. § 455 provides, in part:
 - (a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.
 - (b) He shall also disqualify himself in the following circumstances:
 - (1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;
 - (2) Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;
 - (3) Where he has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceed-

ing or expressed an opinion concerning the merits of the particular case in controversy;

(4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) Is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) Is acting as a lawyer in the proceeding;

(iii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

(iv) Is to the judge's knowledge likely to be a material witness in the proceeding.

3. I am not aware of any ground under § 455 that would disqualify me from serving as special master in this cause.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on the 24th Day of May, 2011, in San Antonio, Texas.

/s/ Gale R. Peterson

Gale R. Peterson

CERTIFICATE OF SERVICE

I hereby certify that on May 24, 2011, I electronically filed the foregoing with the Clerk using the CM/ECF system which will send notification to the following parties:

**For Plaintiffs Best Medical International,
LP.**

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and delivered a chambers copy via (x) Federal Express or () U.S. Mail to:

The Honorable Terrence F. McVerry
Western District of Pennsylvania
700 Grant Street
6th Floor, Courtroom Number 6C, Room Number 6370
Pittsburgh, PA 15219

/s/ Gale R. Peterson

Gale R. Peterson, Special Master